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THE EUROPEAN COMMISSION OF THE DANUBE: AN EXPERIMENT IN INTERNATIONAL ADMINISTRATION ^{1, 2}

"Il ne peut porter ombrage à personne,
puisque tout le monde y est soumis."—Count Károlyi.³

AT the conference between the Bolsheviki and the Germans, held at Brest-Litovsk during the closing days of last year, the Danube River Commission received a new importance from the demand of the Central Powers that the commission be so reorganized as to include Bulgaria. As this proposal indicates that the navigation of the Danube will be discussed when peace comes to be made, it is timely to recall the history of the European Commission of the Danube; doubly timely, indeed, as this commission is one of the most successful and suggestive experiments in international administration, a policy which under the leadership of President Wilson is now, happily, making rapid headway.

Before the Crimean War the commerce of the Lower Danube was greatly hampered by the quarantine regulations imposed by Russia, which since 1829 had practically usurped control of the river mouths by establishing a series of quarantine stations.

¹ Address of the president of the Pacific Coast Branch of the American Historical Association at the annual meeting held in Berkeley, California, November 30, 1917. Slight alterations have been made to conform to developments in Europe.

² The sources consulted in the preparation of this article include: *Recueil de documents relatifs à la liberté de navigation du Danube*, by D. Sturdza, (Berlin, Puttkammer & Muhlbrecht); *Les travaux de la Commission Européenne des bouches du Danube, 1859 à 1911*, by D. Sturdza, (Vienne, Librairie Gerold & Co.); *British and Foreign State Papers*; *British Parliamentary Papers*: 1882, Vol. lxxx (C. 3253), (C. 3392), 1883, Vol. lxxxii (C. 3525), (C. 3526), (C. 3527), (C. 3591), (C. 3804); *French Diplomatic Documents: Affaires étrangères, Navigation du Danube; Conférence et traité de Londres (1883); Notice sur les travaux d'amélioration de l'embouchure du Danube et du bras de Soulina, 1857-1891*. The reports of the British commissioners are found in *Parliamentary Papers*: 1872, lxx (C. 467), 1878, lxxxii (C. 1976), 1894, xc, (C. 7502) and 1907 Commercial, no. 9.

³ Speaking of the proposed Commission Mixte for the Upper Danube, *British and Foreign State Papers* (hereafter abbreviated—B. F. S. P.), 74, p. 1240.

Besides these restrictions, there were natural obstacles which hindered the trade of the Danubian states. Complaints were made, chiefly by Austria at first, but by others after the adoption of free trade by Great Britain stimulated grain shipments from the Danube, that Russia was not only doing nothing to dredge the silted channel, but that she was, on the contrary, aggravating the already bad conditions for the very purpose of hindering commerce on the Danube and increasing that of Odessa.¹ Grain ships and other cargoes were continually shoaling on the river bed, which ever shifted with flood and drought. This meant lighterage, and gave a profitable business to river barges, manned chiefly by Greeks, who were regarded and denounced as pirates, and were charged with being in collusion with river pilots to run ships aground, and with stealing freely from the cargoes.² But no redress could be had, and recrimination waxed ever more bitter until the Crimean War led to an adjustment.

The suggestion to establish an international commission to free the river from impediments seems to have originated with Charles Cunningham, British vice-consul at Galatz, who in a report of September 30, 1850, proposed as one of several methods "that the different nations interested in the navigation of the Danube should name Commissioners (as seems to be done on the Rhine), and the Commission to attend to the duties of clearing the Sulina,"³ a branch of the Danube delta.

This suggestion was elaborated in a memorandum⁴ of the plenipotentiaries of Austria, France and Great Britain, addressed to Prince Gortchakoff of Russia, setting down certain fundamental principles. The second principle was thus stated:

To give the freedom of navigation of the Danube all the development possible, it appears desirable that the course of the Lower Danube,

¹ B. F. S. P., 44, p. 457.

² Report of Colonel Stokes on Improvements in the Danube since 1856; British Blue Books 1871, Commercial 467. Also Bey, Voisin, Notice sur les Travaux d'Amélioration de l'Embouchure du Danube et du Bras de Soulina, 1857-1891, 11 n. See also correspondence between Great Britain and Russia respecting obstacles to navigation of the Danube, 1849-1853, B. F. S. P., 44, pp. 417-476.

³ B. F. S. P., 44, p. 439.

⁴ Dec. 28, 1854.

from the point where it becomes common to two riverain states, should be withdrawn from the existing territorial jurisdiction. . . . In any case the free navigation of the river cannot be assured unless it is placed under the control of a syndical authority invested with the powers necessary to remove the now existing obstacles at the outlets of the stream, or which may form there later.¹

In the conferences to discuss these principles, Baron Prokesch-Osten, one of Austria's delegates, read a statement² giving his views as to the best procedure. He proposed among other measures that the principles for international rivers developed at the Congress of Vienna be applied to the Danube from the point where the river becomes common to the two states, Austria and Turkey.

In the ensuing article-by-article discussion, the debate turned almost wholly on the establishment of the proposed European and Riverain Commissions, on the question of their effect on the sovereignty of the contracting states, and on the representation of nations in them.

The Russian plenipotentiaries objected to the use of the word "syndicat," because it was vague and new.³ The intention, said Gortchakoff, was to assure free navigation of the river; therefore the regulative commission, designated as a "syndicat," should have a scientific and technical character; should be concerned with commerce, and should be kept free of all political considerations. To this Baron Bourqueney of France replied that political considerations could not be wholly excluded from a matter which had risen to the importance of a European guarantee; that the notorious failure to open the Danube justified the greatest precautions, and that therefore the syndicate ought to represent the interests of all. Prince Gortchakoff replied that if the word "syndicat" implied any exercise of sovereignty he must oppose it.⁴ The discussion continuing in a later conference, Prince Gortchakoff stated that his objections

¹ B. F. S. P., 45, p. 53.

² March 21, 1855. B. F. S. P., 45, pp. 68-78.

³ B. F. S. P., 45, p. 69.

⁴ *Ibid.*, 45, p. 69.

to the term were not directed against the institution itself, but were designed to discover a word better adapted to express the idea intended. It was finally agreed to substitute the phrase "European commission" for the word "syndicat."¹

Another point of difference was upon the representation of the nations in the commission. Lord John Russell on behalf of England expressed the desire of his government to be represented upon the executive commission, otherwise known as the Riverain Commission, on the ground of England's important interests in the Danube. To this the plenipotentiaries of Austria replied that, according to the Act of the Congress of Vienna, commissions of this kind should be composed of the delegates of riverain states, and that in so far as this concerned that part of the Danube which traversed her territory, Austria would insist on this principle.² Eventually Russell proposed that if the Riverain Commission were composed of delegates of the riverain states only, the European Commission, having general control of the freedom of navigation, should be permanent. Objections being raised against the necessity and the utility of such permanence, Russell proposed that the European Commission should not be dissolved without unanimous consent. This proposal met with acceptance, and a new article was drafted embodying these arrangements.³

The proposal to neutralize the delta of the Danube, in so far as it affected the liberty of movement and action of the permanent commission, met with determined opposition on the part of the Russian plenipotentiaries. Gortchakoff said that he would not at all consent to a combination which was in effect an indirect expropriation. As to the idea of granting the rights of extraterritoriality to the members of the commission, Gortchakoff observed that this would be applying to Russia a principle which had so far been applied only to the seaports of the Levant. Lord John Russell observing that if neither neutralization nor extraterritoriality were accepted, it would be necessary to define and enumerate exactly the powers of the perma-

¹ B. F. S. P., 45, p. 74.

² *Ibid.*

³ *Ibid.*

nent commission, Gortchakoff replied that he would willingly consent to an agreement on that subject; though he was bound to say that the proposals thus far presented had no purpose other than to hinder the navigation of the Danube, while Russia on the contrary was anxious to obtain its complete development.

When the question was taken up in a later session, the Russian plenipotentiaries declared that they would not oppose any combination which should be shown to be necessary to attain the complete freedom of navigation, but that they were opposed to such arrangements as the neutrality of the delta, which in their opinion went beyond that purpose, and indeed, was in certain respects opposed to its realization. Baron Prokesch in discussing the meaning of the word "neutrality" in this case, stated that when he introduced the word into his original draft, he had given it no political significance.¹ He added that if, in his opinion, the neutrality or even the surrender of the delta had been indispensable to secure the free action of the commissions, he did not think it would have been going beyond the bounds of moderation to formulate such a principle in the interest of Europe, since it was accepted in principle by Russia, and especially since the isles themselves seemed to have no real value for Russia. After vainly examining various proposals, nothing more was possible than approval of the vague statement that "Russia binds herself to aid in every way the action of the permanent congress."

The agreements arrived at in the various sessions of the plenipotentiaries were embodied in a memorandum which, with some changes,² became the basis of the article incorporated in the Peace of Paris at the close of the Crimean War.

The passages in the Peace of Paris relating to the new joint agent may be summarized as follows:

The European nations declare that the arrangement respecting the Lower Danube "henceforth forms a part of the public

¹ B. F. S. P., 45, pp. 76-78.

² In the Treaty of Paris the jurisdiction of the commission was limited to the portion of the river from Isatcha to the sea, whereas in the preliminary draft above it included the portion from Galatz to the sea (B. F. S. P., 45, p. 78).

law of Europe," and is placed under their guarantee. The regulations of police and quarantine shall rest upon the basis of facilitating as much as possible the passage of vessels, and with the exception of these regulations no obstacle whatever shall be opposed to free navigation of the river by any of the nations concerned.

The European Commission was established by Article XVI:

With a view to carry out the arrangements of the preceding Article, a Commission, in which Great Britain, Austria, France, Prussia, Russia, Sardinia, and Turkey, shall each be represented by one delegate, shall be charged to designate and to cause to be executed the Works necessary. . . .

In order to cover the Expenses of such Works, as well as of the establishments intended to secure and to facilitate the Navigation at the Mouths of the Danube, fixed Duties, or a suitable rate, settled by the Commission by a majority of votes, may be levied, on the express condition that, in this respect as in every other, the Flags of all Nations shall be treated on the footing of perfect equality.

The Riverain Commission was created by Article XVII:

A Commission shall be established, and shall be composed of delegates of Austria, Bavaria, the Sublime Porte, and Würtemberg (one for each of these Powers), to whom shall be added Commissioners from the Three Danubian Principalities¹ whose nomination shall have been approved by the Porte. This Commission, which shall be permanent: 1. Shall prepare Regulations of Navigation and River Police; 2. Shall remove the impediments, of whatever nature they may be, which still prevent the application to the Danube of the arrangements of the Treaty of Vienna; 3. Shall order and cause to be executed the necessary Works throughout the whole course of the River; and 4. Shall, after the dissolution of the European Commission, see to maintaining the Mouths of the Danube and the neighboring parts of the Sea in a navigable state.

Article XVIII: It is understood that the European Commission shall have completed its task, and that the River Commission shall have finished the Works described in the preceding Article, Nos. 1 and 2, within the period of two years. The signing Powers assembled in Con-

¹ Moldavia, Wallachia, Serbia.

ference having been informed of that fact, shall, after having placed it on record, pronounce the Dissolution of the European Commission, and from that time the permanent River Commission shall enjoy the same powers as those with which the European Commission shall have until then been invested.¹

The European Commission of the Danube, created by the treaty, and consisting of seven delegates,² met and organized on November 4, 1856. It fixed its headquarters at Galatz, and appointed Charles Hartley chief engineer. Its position was as follows: It depended for funds on Turkey, which had agreed to advance them and had declined the participation of other nations; it had no basis for an opinion as to the best way to attack the river problem; it found river traffic paralyzed; it was expected to complete the opening of the stream in two years.³

In its instructions of April 8, 1857, to the chief engineer, the commission called for a detailed report of the three branches of the delta as a basis for selecting that in which the definitive work should be undertaken. Hartley declared that the exigency of time prevented an exhaustive research of this sort, and expressed the opinion that available data justified attempting provisional works in the Sulina Channel.⁴ Mindful of the fact that its appointment was for two years only, and anxious to avoid the charge of delay and costliness, the commission de-

¹ As the subsequent relations of the European and the Riverain Commission are complex and confusing, it is worth while giving a summary at this point. The European Commission, consisting of representatives of the greater nations, was appointed for two years and was to install the works for opening the river. It was then to turn the management over to the Riverain Commission, composed of delegates of the states bordering on the river. The riverain states were eager to get the control of the river into their own hands, and the non-riverain states, loath to lose control, sought to keep the European Commission alive. In this they were successful, and despite strong insistence from the riverain states the Riverain Commission never came into power, and was presently wholly abandoned.

² Rumania was represented after it became independent, 1878.

³ Protocol 16, Congress of Paris, Mar. 27, 1856. B. F. S. P., 46, p. 107; Stokes (First Commissioner of Great Britain); Bey, *The Danube and its Trade*, p. 10, n. 3.

⁴ Bey, pp. 10-13.

cided to try first-aid methods in the form of dredges. This experiment speedily demonstrated that no simple remedy could possibly cure the trouble, and also tended to exculpate Russia from many of the charges previously made.¹ A comprehensive report of the chief engineer made on October 17, 1857,² cleared up many of these points, but not before objections were heard. The technical advisers of the British government declared that the provisional works on the Sulina were merely money thrown into the sea, and the government twice telegraphed its commissioner to cause the work to be suspended. Having voted with his colleagues, these instructions placed the commissioner in a quandary between his national and his international duty. Legally he was clearly bound to execute the mandate of his nation; morally he—and his nation—were bound by his vote as a commissioner. It later developed that three other governments had sent similar instructions to their delegates.³ Thus four out of seven sovereign nations had given an order to stop work, but the work went on by reason of the existence of the commission. The incident is a poignant illustration of the tendency of a joint agent of nations to determine the action of its constituents.

Meanwhile, prolonged discussion on the branch to be developed went on without producing any agreement; and, the two years ending, it became necessary to refer the matter to the powers.⁴ In the conferences held by them, a sharp clash arose over the continuance of the European Commission beyond the

¹ Bey, pp. 15-16, 148, n.

² Extracts, Bey, pp. 16-43.

³ Bey, p. 148, n.

⁴ Four powers, England, France, Prussia and Sardinia, in 1858 appointed a special technical commission, which in 1858 reported in favor of developing the Saint Georges branch. This report was accepted. In the meantime, however, the European Commission, with a view to facilitating commerce, temporarily constructed provisional works on the Sulina branch, which were finished in 1861 (Bey, p. 426). The unexpectedly great estimates of cost for improving the Saint Georges channel, the delay occasioned by the competing Tchernavoda-Constanza Railroad, and the fact that the provisional works on the Sulina yielded results beyond all expectations, led the powers in 1865 to decide to make the Sulina works permanent (Bey, pp. 48, 429.).

period of two years provided by the treaty. Austria and Turkey, both riverain states, spiritedly opposed lengthening its life. Long and heated discussion brought no agreement, and the five non-riverain Powers—finally supported by Turkey—resolved that the European Commission should finish the work it had begun. Austria entered reservation, but was helpless by virtue of the treaty stipulation that the European Commission could be dissolved by unanimous consent only.¹ It is another illustration of the compelling force of an international joint agent that Austria did not exercise the right she undoubtedly possessed to withdraw from the whole affair.

The conferences of the Powers on the opening of the river continued into 1860, when work was temporarily suspended because a railway from Tchernavoda to Constanza, begun with British capital, threatened to compete with river trade.²

The unexpectedly satisfactory results yielded in the interval by the provisional works on the Sulina led to a decision to make those works permanent. Accordingly the seven powers through their plenipotentiaries issued the Public Act of November 2, 1865.³ By this the European Commission of the Danube was charged, to the exclusion of any interference, with administering, maintaining and developing the works on the river, and was given power to settle the question of the channels to be chosen. In ratifying this convention, the Powers proposed to extend the life of the European Commission for an additional five years.⁴ This was eventually approved, Russia, in accepting, stating that this period should be the outside limit not to be exceeded in any case.⁵

In 1871, at the expiration of the five years, the Powers, viewing the circumstance that the commission had contracted loans for the period, lengthened its life for twelve years, or to April 24, 1883. In 1878, the Treaty of Berlin gave Rumania repre-

¹ Bey, pp. 149-153.

² *Ibid*, pp. 46-48.

³ B. F. S. P., 55, p. 93.

⁴ March 28, 1866. B. F. S. P., 56, p. 624, abbrev. *cf.* Bey, p. 161 *et seq.*

⁵ Bey, p. 169.

sentation on the commission, and extended the jurisdiction of the body to Galatz.¹

When the twelve years expired in 1883, a European conference continued the Danube Commission for a period of twenty-one years from April 24, 1883, and provided for an automatic renewal after that for periods of three years, subject to denunciation with a year's notice, at the expiration of any triennium. The jurisdiction of the commission was extended from Galatz to Braïla.² The Riverain Commission was not again brought into the discussion.

Conformably to the terms of this arrangement, the commission has since 1904 been renewed by three-year periods. It outlasted the first years of the Great War, as is indicated by the appointment of a new commissioner by France in 1916 to succeed a deceased member. The fate of the commission since the conquest of the Danube delta by the Central Powers has not been discovered, and may from this time forward be disregarded.

¹ Art. LIII, Treaty of Berlin, 1878. Bulgaria and Serbia have resented the refusal to admit them on terms of equality into the commission. (B. F. S. P., 69, p. 765; and 74, p. 1231 *et seq.*) The matter has become one of Bulgaria's war aims and is incorporated in the German terms submitted to the Bolsheviks at Brest-Litovsk.

"Art. VIII.—Russia agrees that the administration of the mouth of the Danube be intrusted to a European Danube commission, with a membership from the countries bordering upon the Danube and the Black Sea. Above Braïla the administration is to be in the hands of the countries bordering the river." (*N. Y. Times*, Jan. 3, 1918.) Whether this means, as it may, that the Central Powers propose to have a riverain instead of a European Commission of the Danube remains to be seen. If that is their purpose it ought to fail. For a watercourse of the character of the Danube is of international importance and interest, and the erection of a local national control runs contrary to both the needs of the case and the spirit of the times. If any change is made in the control of the Danube it ought to be in the direction of wider international control. The proposal to give Bulgaria a seat on the commission is directly connected with the fact that Bulgarian forces now hold the Lower Danube, and indicates Bulgaria's intention to retain the Dobrudja, and in consequence to be entitled to representation on the commission as a riparian state.

² Certain changes were, at Russia's instance, made in the jurisdiction of the Kilia branch of the delta; and the navigation and police regulations enacted in 1882 by the Danube Commission with the assistance of Serbia and Bulgaria were declared applicable to that part of the Danube between Braïla and the Iron Gates (B. F. S. P., 74, pp. 20-22).

It is high time to examine more closely the constitution, the powers and the jurisdiction of the commission born into history with such travail and nurtured through infancy into youth with such grave concern and skilful solicitude. By way of preliminary it must be observed that as a matter of course no international commission is legally superior to the nations creating it. The nations erecting the Danube Commission were sovereign states, and each was free to approve or veto the proposal. If, then, they approved of this joint agency, it goes without saying that they guarded their sovereign independence in every way possible. Accordingly they carefully enumerated the powers to be enjoyed by the commission, reserved the right to approve or reject its findings, and jealously limited its life to prevent its getting out of hand. Still, however free a person may be to make or refuse an engagement, once the engagement is made, there is a contractual and moral obligation which replaces the former foot-looseness. This applies to nations, as the events of the last years show. Indeed, the nations formally accepted the principle when on Russia's abrogation of the neutralization of the Black Sea, the following action was taken :

The plenipotentiaries of North Germany, of Austria-Hungary, of Great Britain, of Italy, of Russia, and of Turkey, meeting today in conference have agreed that it is an essential principle of the law of nations that no Power can unbind itself of the obligations of a treaty or qualify its stipulations, except with the consent of the contracting parties by way of an amicable agreement.¹

Thus a treaty is in itself virtually a restriction of untrammelled sovereignty. Now if the treaty, instead of merely pledging its signatory to some course of action, as its own interpretation of the agreement shall dictate, creates some common agent, the mere existence of such an agent tends to place decision in his hands and to take it from the several contracting parties, or, put in another way, the presence of a joint agent makes it more embarrassing and difficult for a nation to

¹ London, Jan. 17, 1871. B. F. S. P., 61, pp. 1198-9.

go an independent or contrary course. Thus one may for practical purposes distinguish between the legal sovereignty of the contracting nations and their moral obligation—often enforced by public opinion—to heed a commission. In most cases of arbitration the parties have enjoyed the legal right to reject the award; but they have very rarely employed it.

The moral sovereignty—if one may use a somewhat exaggerated phrase—of an international joint agent becomes more effective for good, because it offers an organ through which nations can approach one another on the basis of common or united action, instead of as rivals, as is the case in an ambassadorial conference. Not that rivalries are not carried into commissions, but the fundamental conception of a commission is co-operation, whereas ambassadors represent competition.

Considering the moral strength of a commission, it is no wonder that nations are jealous of the powers they confer on it, and that they scrutinize every proposal with the greatest care to ascertain whether it conceals a surrender of national sovereignty. The wonder then is that a commission like that of the Danube enjoyed such great powers as it did.

During its earlier years, the commission was jealously regarded from all quarters, and during this period of trying to make good it lived a sort of hand-to-mouth existence. The agreements reached by it had chiefly to do with raising revenues. The adoption of regulations for its own procedure, for police, navigation and so forth, was hampered by the original plan to replace the European Commission by the permanent Riverain Commission. However, when in 1865 the achievements of the European Commission induced the powers to continue it, the elaboration of its rights and duties could be postponed no longer. This need was satisfied by the plenipotentiaries of the powers at Galatz, in a Public Act with an Annex containing the Regulations of Navigation and Police and the tariff.¹

¹ Nov. 2, 1865. B. F. S. P., 55, p. 93 *et seq.* This replaced a provisional regulation of navigation and police, November 21, 1864 (B. F. S. P., 55, p. 119). It was in turn replaced on November 8, 1870 (*ibid.*, 62, p. 540 *et seq.*), on November 10, 1875 (*ibid.*, 67, p. 639 *et seq.*), on May 19, 1881 (*ibid.*, 78, p. 325 *et seq.*),

A summary of this act and of later acts and revisions is best arranged topically.

The initial function of the Danube Commission concerned the mastery of the river obstacles, a thing that jealous competing nations had not been able to accomplish. Accordingly the commission was armed with discretion in technical matters by Article XVI of the treaty, quoted above, which charged it "to designate and to cause to be executed the works necessary . . . to clear the Danube." In 1865 the commission was further charged "to the exclusion of all interference whatever, to administer these works and establishments for the advantage of the navigation, to watch over their maintenance and preservation, and to give them all the development that the requirements of the navigation may demand." At the same date its discretion was virtually extended to the choice of the proper channel to be developed, which had from the first been largely a political matter.¹ The Powers even agreed that no quays or jetties or other establishments of that nature could be constructed in designated areas by either the territorial authorities or private concerns, unless the plans had been communicated to the European Commission and had been recognized as being in conformity with its general program.²

The methods it employed for the exercise of its control and the agents through whom it should act were laid down by the powers in conference in elaborate regulations of navigation and police. Considering that these regulations were approved by the powers themselves in a conference, it is astonishing to read that "the present regulation . . . may be modified, according to need, by the European Commission"—surely a prerogative of no mean significance.³ Indeed in one instance the commission exceeded its powers, in establishing a pilot service from

and on May 21-8, 1891; Sturdza: *Recueil de Documents relatifs à la liberté de Navigation du Danube*, pp. 687-808. There were special regulations for the river between Braïla and the Iron Gates, June 2, 1882 (Bey, p. 346), and March 10, 1883 (B. F. S. P., 74, p. 23 *et seq.*).

¹ B. F. S. P., 55, pp. 94-95, Art. II, III.

² *Ibid.*, Art. VI.

³ *Ibid.*, 55, p. 119, Art. CXII.

the sea as far as Braïla; but the act was allowed because of its urgent necessity.¹

The exercise of navigation on the Lower Danube was placed under the authority of the Inspector General and the Captain of the Port of Sulina, who are named and paid by the Sublime Porte, but who carry out the regulations enacted by the powers, under the "direction of the European Commission, and as invested with an international character."² The commission may accordingly request their dismissal of the Sublime Porte. The latter may institute an inquiry, which the commission has a right to attend by delegate, but it must without delay remove the agent whose culpability is proved.

The two officers were endowed with limited judicial functions, being empowered to decide summarily on disputes arising between captains of the same nationality as the contending parties, or, in default of them, of two other captains.³ They were also authorized, each within his jurisdiction, to decide disputes between licensed pilots and merchant captains, if their intervention was sought by the latter.⁴ They were further empowered to take cognizance of offenses committed within their jurisdictions against the regulations, and to pronounce the infliction of fines in the first instance, in accordance with the provisions of the act.⁵ Appeals against these decisions were permitted within three months to the European Commission. "The judgment rendered on the appeal is final, and can be the object of no further proceedings whatever."⁶ A similar procedure applies to attempts to evade fines.⁷

To give effect to its decisions the commission needed some sanction. Nor was this wanting. The Treaty of Paris permitted each of the contracting nations to station two light war vessels at the mouths of the Danube.⁸ The function of these vessels was defined as follows:

¹ Stokes, Blue Books, 1871, Com. 467.

² B. F. S. P., 55, pp. 89, 96, 100-101.

³ B. F. S. P., 55, Art. VI, p. 101.

⁴ *Ibid.*, 55, Art. LXXIX, p. 112.

⁵ *Ibid.*, Art. CVIII.

⁶ *Ibid.*, Art. XV.

⁷ *Ibid.*, p. 126.

⁸ *Ibid.*, Art. XIX.

Each naval force acts on the vessel of its own nationality, and upon those whose flag it is called upon to protect, whether by virtue of treaties or usage, or in consequence of a general or special delegation. In default of a vessel of war qualified to interfere, the international authorities can have recourse to the vessel of war of the territorial power.¹

Whether the European Commission is permitted to summon the vessels of the several nations is not directly stated in this connection. The act is more explicit on this point in connection with attempts to evade tariffs, for it provides that commanders shall be called on to assure the payment of duties and of penalties affixed, with respect to vessels of their own nationality, and states:

The action of the ships of war shall be demanded *en règle* through the Captain of the Port of Sulina upon requisition of the accountant charged with the administration of the Navigation Cash Office. In default of a ship of war having power to coerce an offending vessel, the Captain of the Port shall have recourse to the intervention of the Ottoman man-of-war stationed at Sulina.²

The financial operations of the commission throw a further light on its powers and international character. The treaty, as the extract already given shows, empowered the commission to fix and levy equitable duties in order to secure the revenue to carry on its work. All questions of tariffs were to be decided by a majority of votes of the commission. To this highly important provision a great part of the success of the commission has been credited.³ It need hardly be noted that majority rule prevents veto of an action by any one nation—thus favoring the one at the expense of the many—that majority rule results in making law for the minority, and that it therefore represents a truly profound abatement of national sovereignty. It is a principle well-nigh essential to the effective co-operation of states, and the fruits that come from its employment on the Danube urge its wider application.

¹ B. F. S. P., 55, p. 97, Art. XI.

² *Ibid.*, p. 127, Art. XVIII.

³ Bey, p. 147, n.

Though empowered to levy duties, the commission could not hope to get adequate revenue from this source until the river was opened to general traffic. Consequently it was at the beginning dependent on the Sublime Porte, which had reserved to itself the function of financing the river improvements in their first stages. True to this arrangement, the Turkish government from 1857 to 1860 supplied 3,739,540 francs, exclusive of divers other aids in material and the like estimated at about 80,000 francs. The arrangement was not without its drawbacks. Funds came irregularly, thereby often causing the commission serious embarrassment, or compelling it to stop work during the most favorable seasons. Several times, indeed, it was compelled to contract short-time loans at high interest rates to pay current expenses and to meet its contracts.

This situation was happily remedied once the improvements in the river permitted enough traffic to enable the levying of tolls. A provisional tariff was enacted by the commission July 5, 1860.¹ Opposition was expected from the vessels, but did not develop. The Porte voluntarily abandoned its right to supply funds, on condition that it be reimbursed for its advances. Eventually this resulted in taking the Navigation Cash Office at Sulina out of Turkey's control and placing it under the exclusive jurisdiction of the commission.² By these steps the commission became an international financial agent with considerable independence. It could by majority vote fix tariffs, could disburse at discretion, could acquire a surplus. But the novel prerogative was that the international commission could go into the money market and contract loans. Its first loans were made to repay the Turkish advances. In 1860 the Ottoman Bank of Galatz agreed to lend up to about 750,000 francs, but at the onerous rate of 12 per cent interest, beside 1 per cent commission. In 1862 the Nord-deutsche Bank of Hamburg lent the Commission 880,000 francs at 6 per cent

¹ There were various revisions, among them: March 7, 1863; Nov. 2, 1865; Apr. 26, 1867; Nov. 9, 1870; 1873; Dec. 31, 1880; Nov. 21, 1882; Dec. 2, 1884; Nov. 17, 1887; Nov. 19, 1889; Nov. 4, 1902 (Bey, pp. 370-388; Sturdza, *Les Travaux de la Commission Européenne des Bouches du Danube*, pp. 221-2).

² B. F. S. P., 72, p. 9, *cf.* 55, p. 98.

interest and 5 per cent commission, payable in advance. These loans were virtually discharged by the end of 1865. The decision reached in November of that year to make permanent the temporary works of the Danube foreshadowed new loans. Two and a half million francs were needed, but when the commission approached the banks it found that it lacked the credit necessary to borrow so large a sum, except on terms that were prohibitive. No solution was found until six of the powers represented in the commission jointly guaranteed the loan (April 30, 1868).¹ The salutary effect of this guarantee on the commission's credit was apparent in the loan of approximately three and a third million francs (3,375,000) with Bischoffsheim and Goldschmidt, London, at 4 per cent interest. Many other financial operations of a similar nature were conducted by the commission. When as a consequence of the Austro-Prussian War in 1866 the commission got into financial straits, it secured money by issuing bonds, offering the river tolls as security. To be sure, the rate of 10 per cent was high, but the significant fact is that the joint agent of the nations was developing a real identity and personality. Its venture-someness was rewarded with complete solvency.

Passing by the matter of sanitary control, the commission enjoyed another attribute of sovereignty in its neutrality. Russia opposed the principle in its early stages, and kept it out of the treaty. With the passage of time the opposition waned, and in 1865 the Public Act of that year declared that "the works and establishments of all kinds created by the Commission . . . particularly the Navigation Cash Office at Sulina . . . shall enjoy neutrality . . . and shall be, in case of war, equally respected by all the belligerents."³ How this neutrality has fared in the present war is not known.

As a final evidence of the personality of the joint agent of the Danube, one may note that after fifteen years of existence the commission was allowed to have its own insignia and flag.⁴

¹ British Blue Books, 1878, LXXXII (C. 2006), No. 14.

² Bey, pp. 127-144.

³ B. F. S. P., 55, p. 99, Art. XXI; *cf.* Art. VII, *ibid.*, 61, p. 10.

⁴ B. F. S. P., 72, pp. 10-11.

Such is the history, and such the achievement of the European Commission of the Danube, the most ambitious and the most successful experiment in international administration. It remains to consider what light this experiment throws on the problem of bridging the gap between sovereign states.

Three possible ways of doing this are easily discernible. One is by judicial methods, and finds strong support among those who advocate compulsory arbitration or a world court of one sort or another. The obvious difficulty is that no world court can hope to operate without some universal principles to apply, and these are not yet codified. This seems to indicate that those who urge world legislation by developing the Hague Conference into a genuine legislature are nearer the solution. But even if such a legislature could be secured, it would have the greatest difficulty in framing general laws or principles that would be applicable to a diversified earth.

The international administrative agent escapes these objections and has certain advantages. It is created to deal with a single problem, and adjusts itself, its procedure and action to the needs of its task, irrespective of how these principles apply to other, perhaps similar problems. Instead of trying to lay down a co-ordinated set of principles applicable to all the world, it is pragmatic, and does what is convenient in its own case. It may even reverse itself, a thing not possible where a universal law has been decreed. On the other hand, its own precedents are certain to have an influence upon its later actions, and thus there grows up a body of customary law, proved by experience. The international administrative agent enjoys all the advantages which accrue from customary law, and is free from the difficulties of a codified law, which springs into being full-fledged.

If the preceding be true of one commission, it will be true of others. Each will have its own problem, and its own solution; each will develop a body of custom that will harden into law. And by their several activities they will in a space of time develop a whole body of rules which will in effect be the foundation of the super-state itself.

EDWARD KREHBIEL.

STANFORD UNIVERSITY.